weekly peak capacities for a year. Capacity Utilization ranges follow:

High CUR areas:	90 - 100%
Medium CUR areas:	65 - 90%
Low CUR areas:	0 - 65%

Companies that respond to this data request may be asked additional information regarding supporting workpapers for the information they will supply.

Responses shall be provided using the format provided as an attachment hereto. A separate copy of the response shall be supplied to the Commission's Advisory and Compliance Division, Attention: Fassil Fenikile. Any questions concerning the technical data requested herein should be directed to Mr. Fenikile (415-703-3056).

Dated April 22, 1994, in San Francisco, California.

/s/ THOMAS R. PULSIFER
Thomas R. Pulsifer
Administrative Law Judge

Capacity Utilization Rates (CUR)

Capacity Utilization Rate is defined as the ratio of the average busy hour capacity in Erlangs to designed capacity in Erlangs for each cell site.

Capacity Utilization rate = Average Busy Hour Capacity in Erlangs / Designed Capacity in Erlangs

CUR should be determined for each cell site

1989	CUR Range (in %)	# of Cell Sites	Average CUR (in %)
High Use	90 - 100		
Medium Use	65 - 90		
Low Use	0 - 65		

1990	CUR Range (in %)	# of Cell Sites	Average CUR (in %)
High Use	90 - 100		
Medium Use	65 - 90		
Low Use	0 - 65		

1991	CUR Range (in %)	# of Cell Sites	Average CUR (in %)
High Use	90 - 100		
Medium Use	65 - 90		
Low Use	0 - 65		

1992	CUR Range (in %)	# of Cell Sites	Average CUR (in %)
High Use	90 - 100		
Medium Use	65 - 90		
Low Use	0 - 65		

1993	CUR Range (in %)	# of Cell Sites	Average CUR (in %)
High Use	90 - 100		
Medium Use	65 - 90		
Low Use	0 - 65		

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Directing Parties to Provide Further Supplemental Information on all parties of record in this proceeding or their attorneys of record.

Dated April 22, 1994, at San Francisco, California.

/s/ VIRGINIA D. LAYA
Virginia D. Laya

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number of the service list on which your name appears.

APPENDIX C

TRP/gab

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own Motion into Mobile Telephone Service and Wireless Communications.	))))	I.93-12-007

ADMINISTRATIVE LAW JUDGE'S RULING GRANTING MOTION FOR MODIFICATION OF JULY 19, 1994 RULING

Administrative Law Judge (ALJ) ruling of July 19, 1994 granted the motions, in part, for confidential treatment of data submitted by certain cellular carriers (respondents)[1] in response to ALJ data requests in this proceeding. The ruling directed respondents to provide the confidential data to the Cellular Resellers Association (CRA) under a nondisclosure agreement.

On July 26 and 27, 1994, additional motions were filed by certain of the respondents requesting modification or clarification of the July 19 ALJ ruling. Still concerned over publicly disclosing certain data which the July 19 ruling deemed to be nonconfidential, certain respondents redacted the information described in Categories 1(b)(1), (2), and (3) on page 6 of the ruling from the copy provided to CRA. Categories 1(b)(1) and (2) concern data on the number of aggregate subscribers on each carrier's discount plans and basic rate plans, respectively. Category 1(b)(3) concern the number of aggregate subscribers of the company in total, broken down between wholesale and retail service.

The July 19 ruling designated this data nonconfidential since it disclosed only aggregate subscriber numbers, but not customer numbers on any single discount plan. Thus, competitors

1 Respondents filing separate motions include AirTouch Cellular (AirTouch), Bay Area Cellular Telephone Company (BACTC) McCaw Cellular Communications (McCaw), and US West Cellular (US West). Respondents filing joint include GTE Mobilenet (GTE), Fresno MSA, Contel Cellular, and California RSA No. 4.

would not be able to learn which particular discount plan(s) were more popular with subscribers with the intent of emulating them for competitive advantage. In lieu of disclosing this information, the respondents filed motions for modification of the ruling. The procedure for filing the motions was approved by the ALJ by phone call with certain carriers' representatives prior to the motions being filed.

On July 29, an interim ruling was issued temporarily staying the portions of the July 19 ruling for which respondents sought reconsideration, pending an opportunity for comment by other parties by August 3, 1994. The July 19 ruling also directed public disclosure of the percentages--as opposed to specific numbers of customers--applicable to the various categories of data cited in parties' motions. This ruling grants the motions of the respondents for reconsideration, as noted below.

Positions of Parties

Respondents request that the Commission treat the information in categories 1(b)(1), (2), and (3) of the July 19 ruling as confidential, and that the ruling be revised accordingly. Respondents argue that if this data is not kept confidential, competitors will have sufficient information to fully and accurately calculate the market share of the respondent providing the data, and use such information to the competitive harm of the party providing the data.

Although the July 19 ruling provided for only the number of aggregate subscribers to be publicly disclosed, respondents contend that even the types of aggregate data called for by the ALJ ruling are of so specific as to render them very valuable to competitors who could use them to analyze the carrier's business operations. Disclosure of such information to competitors would allow them to tailor their marketing plans in response to the carrier's subscribership pattern. A competitor may also structure an advertising sales message claiming superiority over the carrier

based on total subscribers or number of subscribers by a specific customer segment or growth rate of total subscribers.

On August 3, two parties, Cellular Carriers' Association of California (CCAC) and CRA filed responses to the July 26/27 motions. CCAC supports respondents' motions. CCAC contends that any inadequate showing of competitive harm in the initial motions has since been remedied by the justifications provided in the motions for modification. According to CCAC, "imminent and direct harm" would result from disclosure of the disputed customer information to competitors who could then use it to tailor their own discount plans and marketing strategies accordingly. CCAC asserts that no competitor should be compelled to divulge to its competition what amounts to a blue print of its subscriber area strengths and weaknesses. CCAC also disputes that public disclosure of the disputed data promotes a "fully open regulatory process" since only cellular carriers--and not other wireless service providers--are being compelled to disclose sensitive data. CCAC submits that it is unfair to require such disclosure from some providers and not others, and that compelling such disclosure will compromise the healthy competition which the Commission seeks to foster.

CRA opposes the motions for modification of the July 19 ALJ ruling, and argues that there has been no showing of "imminent and direct harm of major consequence" from disclosure of the data. CRA observes that not all the carriers have objected to provide the requested data in aggregate form. For example, California RSA #2 provided the data to CRA without complaint. Likewise, Los Angeles Cellular Telephone Company (LACTC) did not object to providing the noted data. CRA also disputes, in particular, US West's claims of competitive harm, noting that US West has announced a joint venture with its San Diego duopoly competitor, AirTouch. CRA also contends that mere knowledge of aggregated subscriber information would not be usable by competitors to gain any advantage over carrier making

the disclosure since the subscriber would not know which plans subscribers are utilizing.

Discussion

As stated in the earlier July 19 ruling, the standard for ruling on parties' motions for confidential treatment is whether public disclosure would cause "imminent and direct harm of major consequence." The risk of such harm is to be balanced with "the public interest of having an open and credible regulatory process." (In Re Pacific Bell 20 CAL PUC 237, 252). Examples of information considered to cause such harm includes customer lists, prospective marketing strategies, and true trade secrets.

It is concluded that based on the additional explanation presented by respondents, in their motions of July 26/27, the data referenced in categories 1(b)(1), (2), and (3) of the July 19, 1994 ALJ ruling should be restricted from public disclosure and treated confidentially. Parties may still obtain access to this confidential data, but only through execution of an appropriate nondisclosure agreement.

As explained by the July 26/27 motions, however, the problem of significant competitive harm is not eliminated merely by requiring the data to be disclosed in the aggregate. Even though in aggregate form, the disclosure of absolute numbers would still reveal the relative market shares of each respondent in each of the service areas identified in the original ALJ data request. Knowledge of market share could be used by a competitor to structure an advertising message claiming superiority over the carrier, based on total subscribers. If a competitor knew a carrier's specific number of subscribers by market area applicable to the various categories referenced in the July 19 ruling, it could assess the carrier's strengths and weaknesses and adjust its marketing strategy accordingly.

The only party to file an objection to respondents' motions was CRA. As one reason for its objection, CRA cites the

fact that at least two carriers, California RSA #2, Inc. and LACTC did not object to providing the data on aggregate numbers of customers. The willingness of these carriers to publicly disclose the data for their own operations does not, of itself, prove that similar disclosure by other carriers would not cause them competitive harm. The basis for deciding the motions at issue are the claims of competitive harm that would result for those carriers who did file motions. There is no basis to speculate regarding why other carriers chose for whatever reason not to object to releasing various forms of data. On this basis of the filed motions, the carriers have provided adequate justification.

CRA also cites the announcement of a joint venture between US West and its only duopoly competitor, AirTouch as additional evidence justifying public disclosure of the data. According to CRA, US West's position amounts to nothing less than AirTouch can have this competitive information, but the public or any other competitor cannot. Thus, CRA appears to concede that the information has competitive value, but seeks to have it publicly disclosed anyway so all prospective competitors can have equal opportunity to competitively benefit from the information, not just AirTouch. By advancing this argument, CRA actually lends credence to carriers' arguments that the data does, in fact, have commercially sensitive value to competitors. The fact that US West voluntarily decides to share certain data with AirTouch in connection with a joint venture is its proprietary right. It does not follow that US West should be required to disclose commercially sensitive data to other competitors with whom it has no joint venture interests.

As a final argument, CRA claims that since the data would only disclose aggregated numbers, it cannot be construed to be a "trade secret." Since the aggregated data would not disclose which billing plans a subscriber utilized, CRA argues that a competitor would not be able to use the data for competitive gain.

Yet, the additional arguments presented by the carriers show that there is an economic value in knowledge of the aggregate number of subscribers to the extent it indicates a carrier's market share in particular market areas and total number of subscribers on discount plans in given market areas. Such information can be reasonably classified as "trade secrets." As defined under the Uniform Trade Secrets Act, codified in the California Civil Code, § 3426 et seq., a "trade secret" is:

> "information ....that derives independent economic value, actual or potential, from not being generally known to the public...and that is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

Accordingly, to the extent the information on numbers of subscribers has significant economic value to competitors, it can properly be considered as "trade secrets" under the Uniform Trade Secrets Act. In the interests of promoting a more competitive market, carriers should be allowed to protect the confidentiality of such competitively sensitive information.

Procedures for Third-Party Access to Carriers' Data Responses

In its motion, BACTC also requests that the Commission clarify the procedure to be followed for making non-confidential data available to the public while preserving the confidentiality of information deemed proprietary under General Order (GO) 66-C. BACTC notes that although the ALJ ruling establishes a procedure to provide the publicly available information in the data request to CRA, no procedure was explained whereby the non-confidential data is to be made available to other parties. BACTC proposes that all data produced in response to the ALJ rulings of April 11, 1994 and April 22, 1994 be physically segregated from the public documents in the formal proceeding files. BACTC also proposes that parties go through the respective carriers to request access to the data responses.

No other party commented on BACTC's proposal as to procedures for Commission custody of the data, and third-party access. BACTC's request for clarification of procedures for providing data to third parties is addressed in the ruling below.

IT IS RULED that:

1. The motions of the respondents to modify the July 19, 1994 ruling are granted with respect to the confidentiality of information designated as categories 1(b)(1) (2), and (3) in the July 19 ruling as described above.

2. The July 19, 1994 ruling is revised as follows: The information on aggregate numbers of subscribers indicated in categories 1(b)(1), (2), and (3) of the ruling shall be subject to the confidentiality provisions of GO 66-C and Public Utilities Code § 583, applicable to those respondents filing motions for reconsideration.

3. This confidential information shall be provided to CRA pursuant to the nondisclosure agreement as explained in the July 19 ruling.

4. Any party, other than CRA, interested in obtaining a copy of the redacted version of the data responses provided by the carriers in this proceeding shall directly contact the respective carriers to obtain such copies, not Commission staff.

5. The carriers shall promptly provide to any party who makes a specific request, a copy of all redacted data responses produced by carriers in this proceeding.

6. Any party, other than CRA, interested in obtaining a copy of the unredacted confidential version of the data responses provided by the carriers in this proceeding shall do so by contacting the respective carriers and executing a nondisclosure agreement as prescribed in the July 19 ruling. Confidential copies shall not be available through the Commission.

Dated August 8, 1994, at San Francisco, California.

/s/ THOMAS R. PULSIFER
Thomas R. Pulsifer
Administrative Law Judge

APPENDIX D

DRAFT

PROTECTIVE ORDER

Adopted: ; Released:

By the Chief, Private Radio Bureau:

It is HEREBY ORDERED:

1. For purposes of this Order, "Confidential Information" shall mean and include trade secrets and commercial or financial information which is privileged or confidential under Exemption 4 of the Freedom of Information Act, 5 U.S.C. § 552 (b)(4), as well as material claimed to be gathered in an ongoing antitrust investigation of the cellular industry by the Attorney General of the State of California (Investigation).

2. Confidential Information submitted herein by the People of the State of California and the Public Utilities Commission of the State of California (California) shall be segregated from all material filed and deemed non-confidential as generally set forth in the pleadings filed publicly by California on August 9, 1994, and subsequent revisions filed on Septebmer 13, 1994, in PR Docket No. 94-105. Confidential information, as redacted, shall consist of:

a. Market share data as contained in pages 29 to 34 of the unredacted Petition of the People of the State of California and the Public Utilities Commission of the State of California To Retain State Regulatory Authority Over Intrastate Cellular Service Rates (Petition) and Appendix E thereto. The data on page 29 is disggregated by carrier, and on pages 30-35, aggregated by market. Some data on page 30 is further aggregated by combining data in two markets. The data in Appendix E is aggregated as to resellers by market, and disggregated for cellular carriers.

b. Capacity utilization figures as contained in pages 50-53 of the Petition, and in Appendix M. This data is aggregated for the Los Angeles market on page 51 and Appendix M-1, and disaggregated as to specific carriers on pages 52-53 of the Petition and Pages M-1 to M-3 of Appendix M.

c. Financial data per subscriber unit, including revenues, operating expenses, plant, operating income, subscriber growth percentages for 1989-93, found in Appendix H to the Petition. This data is disaggregated as to specific cellular carriers.

d. Number of customers per year, per rate plan, both

wholesale and retail as contained in Appendix J to the Petition. This data is disaggregated as to specific cellular carriers.

e. Material redacted from pages 42, 45 and 75 of the Petition which California claims to have been gathered in the Investigation.

3. Confidential Information may be disclosed:

a. to counsel for the Parties listed hereinafter in Appendix A (Parties) and their associated attorneys, paralegals and clerical staff predicated on a "need to know" basis.

b. to specified persons, including employees of the Parties, requested by counsel to furnish technical or other expert advice or service, or otherwise engaged to prepare material for the express purpose of formulating filings in connection with PR Docket No. 94-105.

4. Counsel may request the Commission to provide one copy of Confidential Information (for which counsel must, as a prerequisite, acknowledge receipt pursuant to this Order), and counsel may thereafter make no more than two additional copies but only to the extent required and solely for the preparation and use in this proceeding, and provided further, that all such copies shall remain in the care and control of counsel at all times. Following the filing of Further Comments on ____, 1994, counsel shall retain custody of the Confidential Information until such time as it is necessary to prepare additional filings in connection with PR Docket No. 94-105 in the discretion of counsel. If such additional filings are necessary, counsel shall retain custody of the Confidential Information following submission of such additional filings. Counsel shall return to the Commission within forty-eight hours after the final resolution of PR Docket No. 94-105 all Confidential Information originally provided by the Commission as well as all copies made, and shall certify that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel may retain copies of pleadings submitted on behalf of clients.

5. Confidential Information shall not be used by any person granted access under this Order for any purpose, other than for use in this proceeding, and shall not be used for competitive business purposes or otherwise disclosed by such persons to any other person except in accordance with this Order. This shall not preclude the use of any material or information in the public domain or which has been developed independently by any other person.

6.

a. Counsel inspecting or copying Confidential Information shall apply for access to the materials covered by this Order under and by use of the "Attorney Application For Access To Materials Under Protective Order" appended to this Order.

b. Counsel may disclose Confidential Information to persons to whom disclosure is permitted under the terms of this Order only after advising such persons of the terms and obligations of this Order.

c. Counsel shall provide to the FCC and, in the absence of a need for confidentiality, to California, the name and affiliation of each person other than counsel to whom disclosure is made or to whom actual physical control over the documents is provided. To the extent that anyone's name is not disclosed to California, that fact shall be disclosed to the FCC and California.

7. Parties may in any pleadings that they file in this proceeding, reference the Confidential Information, but only if they comply with the following procedures:

a. any portions of the pleadings that contain or disclose Confidential Information are physically segregated from the remainder of the pleading:

b. the portions containing or disclosing Confidential Information are covered by a separate letter referencing this Protective Order:

c. each page of any Party's filing that contains or discloses Confidential Information subject to this Order is clearly marked "confidential information included pursuant to Protective Order, DA 94-___."

d. the confidential portion of the pleading shall be served upon the Secretary of the Commission, California and the other Parties and not placed in the Commission's Public File, unless the Commission directs otherwise. The Parties may provide courtesy copies to the Legal Advisor to the Private Radio Bureau Chief, who will distribute the copies to the appropriate Commission personnel.

8. Disclosure of materials described herein shall not be deemed a waiver by California or any other Party in any other proceeding, judicial or otherwise, of any privilege or entitlement to confidential treatment of such Confidential Information. Inspecting parties, by viewing said documents: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceedings; and (c) agree that

accidental disclosure of privileged information shall not be deemed a waiver of the privilege.

9. The entry of this Order is without prejudice to the rights of California to apply for additional or different protection where it is deemed necessary or to the rights of the Parties to request further or renewed disclosure of Confidential Information. Moreover, it in no way binds the Commission from disclosing any information where the public interest so requires.

10. This Order is issued under Section 0.331 of the Commission's Rules, 47 C.F.R. § 0.331, and is effective on its release date.

FEDERAL COMMUNICATIONS COMMISSION

Ralph A. Haller, Chief
Private Radio Bureau

APPENDIX E

ALJ DOCUMENT
EM. 50604

TRP/bwg

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Investigation on the Commission's Own Motion Into Mobile Telephone Service and Wireless Communications.	))))	I.93-12-007

ADMINISTRATIVE LAW JUDGE'S RULING GRANTING IN PART MOTIONS FOR CONFIDENTIAL TREATMENT OF DATA

By Administrative Law Judge (ALJ) rulings dated April 11, and April 22, 1994, certain respondents in this proceeding were directed to provide information to the Commission for their cellular operations concerning average subscriber rates, total number of cellular units in service, and capacity utilization rates. Much of the responsive data was provided confidentially pursuant to Commission General Order (GO) 66-C and Public Utilities (PU) Code § 583, but with no justification for the requested confidential treatment.

A subsequent ALJ ruling dated May 5, 1994 directed parties asserting claims of confidentiality under GO 66-C to file a motion by May 16, 1994 providing justification for confidential treatment, based on the standard applied in Pacific Bell, 20 CPUC 2d 237, 252 (1986). Under that standard, confidential treatment would be granted only upon a showing that release of the data would lead to "imminent and direct harm of major consequence, not a showing that there may be harm or that the harm is speculative and incidental." Any party (other than the Commission's Division of Ratepayer Advocates) interested in reviewing any of the data submitted under claims of confidentiality was directed to advise the respective cellular carrier of its interest in entering into a nondisclosure agreement permitting access to such data as required for purposes of this proceeding.

In response to the ALJ ruling, the carriers submitted the requested motions formally requesting confidential treatment for

information provided and offered reasons which they believed justified their confidentiality requests. Some of the carriers disputed the validity of applying a standard as rigorous as that adopted in Pacific Bell for purposes of cellular carriers' confidentiality claims. For example, Bay Area Cellular Telephone Company (BACTC) argues that because cellular carriers face a more competitive environment than was faced by Pacific Bell at the time the cited standard was set, it is not appropriate to hold carriers to such a stringent standard. Yet, because it believes the information provided by the carriers is clearly of such significance to their competitive positions, BACTC argues that the Pacific Bell standard is clearly met anyway, and its legal relevance need not be tested in this case.

Although the carriers agreed generally as to the scope of data to granted confidential treatment, they also expressed some differences of opinion. For example, Los Angeles Cellular Telephone Company (LACTC) does not object to disclosure of the total number of subscriber units as of March 1994, or of the total percentage of units on alternative plans, but does object to disclosure of the precise number of units in each plan, or the minutes of use consumed in each user category. LACTC also has no objection to disclosure of the total number of cell site sectors in operation since this information may be derived from public files. By contrast, the other carriers object to disclosure of both the aggregate number of subscribers on all discount plans as well as the number of subscribers on each individual plan.

Carriers argue that information submitted concerning the number of subscribers under individual payment plans and capacity utilization data is presented in a manner to reveal commercially sensitive information about the carrier's market share and the success of marketing strategies. They contend that disclosure to competitors of detailed information about subscriber response to specific plans would allow competitors to tailor their marketing

plans in response to the carrier's subscribership patterns by pricing plans. Disclosure of subscriber data could enable a competitor to possibly structure an advertising sales message claiming superiority over the competing carrier based on total subscribers or number of subscribers by a specific customer segment. Disclosure of the carriers' capacity utilization data could likewise allow competitors to glean sensitive data as to the configuration and use of the carrier's system as a basis to make planning decisions rather than basing decisions on each competitor's independent analysis of the marketplace.

On May 26, 1994, Cellular Resellers Association, Inc. (CRA) filed a response to the collective motions of the cellular carriers requesting confidential treatment. CRA states that by letters dated May 12, 1994, it requested from each of the carriers to be provided a copy of the data submitted on a confidential basis to the Commission under a nondisclosure agreement. As of May 26, CRA had received data to be held confidentially only from GTE. By letter of May 20, 1994, McCaw refused to provide CRA access to the confidential data even under a nondisclosure agreement. While it has apparently not responded to CRA, BACTC stated in its Motion that it is "fully prepared to disclose even this highly confidential information to counsel for other parties and their designated experts pursuant to customary non-disclosure agreements."

CRA thus requests an ALJ ruling ordering that all of the requested data dated prior to 1992 be publicly released since it would not cause any imminent or direct harm of major consequence. CRA further requests that it be provided all other data for 1992-93 pursuant to a reasonable nondisclosure agreement in the manner agreed to by GTE.

Discussion

Two issues must be resolved relating to nondisclosure of the submitted data. First, what portion, if any, of the data

should be restricted from public disclosure. Second, would disclosure of any of the data to CRA even under a nondisclosure agreement result in competitive harm to cellular carriers?

As to carriers' challenge to the Pacific Bell case as a relevant precedent by which to judge the confidentiality claims of cellular data, no convincing arguments were offered to justify abandoning the standard in this instance. The extent to which cellular carriers are competitive is a contested issue in this proceeding. It would be prejudging this issue to discard the Pacific Bell standard on the premise that cellular carriers are fully competitive. In any event, it has not been shown that even assuming the carriers were competitive, that the standard, itself, should be discarded. If anything, only the determination of how to apply the standard, i.e., what constitutes "imminent and direct harm of major consequence" might be influenced by the degree of competitiveness in an industry. Accordingly, the Pacific Bell standard requiring a showing of "imminent and direct harm of major consequence" is relevant in evaluating the carriers' motions in this instance. Under the Pacific Bell standard, "in balancing the public interest of having an open and credible regulatory process against the desires not to have data it deems proprietary disclosed, we give far more weight to having a fully open regulatory process." (Id. 252.)

It is concluded that the respondents have provided adequate justification for confidential treatment of information on the basis of "imminent and direct harm" relating to certain information only. Confidential treatment is warranted for the number of subscribers associated with specific billing plans and for data relating to capacity utilization, at least for recent periods. As explained above, such information has commercial value to competitors which could be used to the detriment of the carrier disclosing it. On the other hand, carriers have not shown that "imminent and direct harm" will result from disclosure of

information relating to the aggregate number of subscribers associated with all discount plans of a given carrier, or the aggregate number of subscribers serviced by resellers. LACTC, for example, acknowledges that disclosure of aggregate subscribers under all discount plans would not be competitively damaging in its case. No other carrier explained how its circumstances so differed from those of LACTC such that disclosure of such aggregate data could be used to its significant competitive harm.

Carriers generally agree that the rate information in their data responses which is derived from published tariffs can be publicly disclosed without competitive harm. Accordingly, since no basis has been provided to restrict such information, such publicly available tariff data will not be subject to confidential treatment.

CRA argues that data for the period covering 1989-1991 should be publicly released because of its age (almost 2-1/2 years old). CRA's argument is reasonable. Given the rapid pace of technological change and customer growth within the cellular industry, historical data can become quickly outdated and of limited value to competitors in evaluating strategies prospectively. There is little likelihood that historical information as old as from 1989-91 could cause "imminent and direct harm of major consequence" in such a manner.

Regarding the dispute over whether CRA should be granted access to confidential data under a nondisclosure agreement, the following procedure will be adopted. CRA shall be granted access to the data responses provided by carriers on the following terms. A redacted copy of the data responses provided to the Commission by the carriers shall be provided to CRA without the need for a nondisclosure agreement. Information designated confidential under this ruling shall be redacted from the copy provided to CRA.

A separate unredacted version of the data responses disclosing data found to be confidential under this ruling shall be

provided only to designated reviewing representatives of CRA under the terms of an appropriate nondisclosure agreement. The terms under which reviewing representatives shall be designated are outlined in the order below. This approach provides a balance between the need to encourage open public involvement in Commission proceedings versus the need to protect sensitive proprietary data with commercial value to competitors.

IT IS RULED that:

1. The carriers' motions for confidential treatment of submitted data is granted, in part. The data marked confidential and proprietary by the cellular carriers submitted pursuant to ALJ rulings dated April 11 and April 22, 1994 shall be restricted from public disclosure in accordance with General Order 66-C and Public Utilities Code § 583, except for the following:

   a. All data relating to the calendar years 1991 and earlier.

   b. For data relating to calendar years 1992 and 1993, only the following shall be publicly disclosed:

      (1) Aggregate activated subscriber numbers on discount rate plans, without disclosing numbers on individual plans.

      (2) Aggregate activated numbers on basic rate plans.

      (3) Aggregate activated numbers subscribers divided between wholesale and retail service.

      (4) Publicly available tariff information.

      (5) Total number of cell site sectors in operation.

2. Within five business days following issuance of this ruling, a redacted copy of the data responses provided to the Commission pursuant to this proceeding by the carriers shall be